

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>JAMES STEPP, <i>et al.</i>,</b>	:	<b>Case No. 3-91-cv-468</b>
<b>Plaintiffs,</b>	:	
<b>v.</b>	:	
<b>MONSANTO RESEARCH CORP., <i>et al.</i></b>	:	<b>District Judge Walter H. Rice</b>
		<b>Magistrate Judge Michael J. Newman</b>
<b>Defendants.</b>	:	

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**ORDER**

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This case has been litigated since 1991. On May 16, 2012, Judge Walter H. Rice issued an Order and Final Judgment (doc. 361) approving the Settlement Agreement (doc. 202-1) agreed to and signed by counsel for Plaintiffs and Defendants. Under the terms of the Settlement Agreement, Defendants agreed to pay the sum of \$240,000.00 (*id.*), an amount which has since been remitted to a trust account at Fifth Third Bank.

Of the \$240,000.00, the Court approved \$2,895.05 to be paid to Plaintiffs' counsel for costs incurred for publications in the Dayton Daily News and Miamisburg News, as well as mailings related to settlement of this matter. (Doc. 361). In addition, the Court approved \$79,034.83 -- one-third of the net settlement fund -- as partial reimbursement of the expenses incurred by Plaintiffs' counsel (Waite, Schneider, Bayless & Chesley Co., L.P.A.). Thus, after subtracting the aforementioned costs and expenses, the remaining amount of the settlement fund is \$158,070.12 (\$240,000.00 minus \$2,895.05, minus \$79,034.83 = \$158,070.12).

This matter has been referred to the undersigned, Magistrate Judge Michael J. Newman, for the limited purpose of fairly and equitably distributing the remaining \$158,070.12 pursuant to the terms of the Settlement Agreement and the Order and Final Judgment issued by Judge Rice.

### **I. PAYMENT TO INDIVIDUALS WHO GAVE DEPOSITIONS**

Pursuant to Paragraph 5 of the "Settlement Terms" of the Settlement Agreement, any person who gave a deposition in this matter, and submitted to the Court a signed General Release, is entitled to \$2,000.00 per deposition. (Doc. 202-1, at PageID 1315). On April 12, 2012, Plaintiffs' counsel filed a Notice of Individuals Who Gave Depositions (doc. 224), which identifies thirty individuals who collectively gave a total of thirty-six depositions in this matter.

Through the date of this Order, twenty-nine of the thirty individuals -- who collectively account for thirty-five depositions -- have provided a signed General Release, as required by the Terms of the Settlement Agreement in order to receive compensation thereunder.

Accordingly, Fifth Third Bank, as trustee of the settlement fund, is **ORDERED** to pay a total of \$70,000.00 of the fund to the following twenty-nine individuals, in the following amounts:

- (1) Charles Azbill, Jr. -- \$2,000 (1 deposition)
- (2) Sarah Lou Bell -- \$2,000 (1 deposition)
- (3) Donald Brandenstein -- \$2,000 (1 deposition)
- (4) Celesta Branscum -- \$2,000 (1 deposition)
- (5) Sharon Cowdrey -- \$4,000 (2 depositions)
- (6) William Derringer, Sr. -- \$2,000 (1 deposition)
- (7) Crystal Burns DeWeese -- \$4,000 (2 depositions)
- (8) Demaree DeWeese -- \$2,000 (1 deposition)
- (9) Shirley English -- \$2,000 (1 deposition)
- (10) Mary Flowers -- \$2,000 (1 deposition)
- (11) Russell Flowers -- \$2,000 (1 deposition)
- (12) Katherine Adams Forteluza -- \$4,000 (2 depositions)
- (13) Geraldine Raney Foust -- \$2,000 (1 deposition)
- (14) Rick Francis -- \$2,000 (1 deposition)
- (15) Samuel Green -- \$2,000 (1 deposition)

- (16) Lacynda Cowdrey Gurdon -- \$2,000 (1 deposition)
- (17) Suzette Harp -- \$2,000 (1 deposition)
- (18) Roy Havens -- \$2,000 (1 deposition)
- (19) Judy Miller -- \$2,000 (1 deposition)
- (20) Kim Recker (a/k/a Kim Bendig) -- \$2,000 (1 deposition)
- (21) Laura Roseberry -- \$2,000 (1 deposition)
- (22) Howard Serio -- \$2,000 (1 deposition)
- (23) Kathy Spegal -- \$2,000 (1 deposition)
- (24) James D. Stepp -- \$2,000 (1 deposition)
- (25) Teresa Stepp -- \$4,000 (2 depositions)
- (26) Diana Tragesser Washburn -- \$4,000 (2 depositions)
- (27) Joseph Wilson -- \$2,000 (1 deposition)
- (28) Sandra Woodard -- \$2,000 (1 deposition)
- (29) Sharon Sizemore Woodard -- \$4,000 (2 depositions)

In the interest of justice and final resolution of this matter, the Court will not consider the claim of any other deponents at any point following the issuance of this Order.

## **II. PAYMENT TO CLAIMANTS**

Pursuant to Paragraphs 6 -10 of the "Settlement Terms" of the Settlement Agreement, the balance of the settlement fund -- \$88,070.12 (\$158,070.12 minus \$70,000 = \$88,070.12) -- is to be distributed amongst those individuals who have submitted to the Court: (1) a written claim qualifying for payment pursuant to the terms of the Settlement Agreement; and (2) a signed General Release. (Doc. 202-1).

The Court has carefully and thoroughly reviewed each of the one hundred ninety-five claims submitted in this matter, as well as any supporting documentation (including medical records, property records, death certificates, affidavits, *etc.*) attached thereto. Moreover, in the interest of justice and fairness, the Court has considered all claims submitted up through the date of this Order.

Based upon its review of all of the claims and supporting documentation, the Court finds that equitable distribution of the balance of the settlement fund, amongst all of the claimants

listed below, is warranted in this matter. Accordingly, Fifth Third Bank, as trustee of the settlement fund, is **ORDERED** to pay each of the following one hundred ninety-five claimants the amount of **\$451.64**:

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| (1) Brittany L. Sylvester   | (35) Vicki Gilbert   |
| (2) Nellie J. Houston   | (36) Ira D Gilbert   |
| (3) John D. Houston, filed by Nellie J. Houston (Payable to Nellie Houston) | (37) Annette Marker, filed by Vicki Gilbert (Check payable to Vicki Gilbert)         |
| (4) Rodney L. Flowers   | (38) David P Gilbert   |
| (5) William L. Flowers  | (39) Christin Gilbert  |
| (6) Maud E Houston  | (40) TaShawna Clark  |
| (7) Joseph W Houston  | (41) Judith Ann Payne a/k/a Judith Ann Hall  |
| (8) Edith Bolden  | (42) Janet K Marker  |
| (9) Glenda Sue Stevens  | (43) Kenneth Marker  |
| (10) Nikki N. Hanshell  | (44) Paul L Marker   |
| (11) James Jewell   | (45) Danny Lee Hall  |
| (12) Tanya Gass Cowman  | (46) Jessica Byford  |
| (13) David A Hayes  | (47) Brenda Byford   |
| (14) Celesta L Branscum   | (48) Tanya Byford Whitlow  |
| (15) Mildred Langford   | (49) Eddie D Guerra  |
| (16) Kenneth Hensley  | (50) James Byford  |
| (17) Lora Hensley   | (51) Earl Langford   |
| (18) Ronald D. McCoy  | (52) John H Byford   |
| (19) Fred E Hensley   | (53) Kim Bendig a/k/a Kim Recker   |
| (20) Mary E Gray  | (54) Rick Snowden  |
| (21) Howard J Gray, Jr  | (55) Kitty Snowden, filed by surviving spouse Rick Snowden (Payable to Rick Snowden) |
| (22) Richard L Derringer, Jr.   | (56) Casey Snowden   |
| (23) Carol Ann Heitzman   | (57) Diana L Flowers   |
| (24) Jonathon Powell  | (58) Phyllis Trimble   |
| (25) Priscilla Saunders   | (59) Mae L. Boyer (f/k/a Mae L. Paulsen)   |
| (26) Robert K Hasty   | (60) Jean L. Swafford (a/k/a Jean L. Swafford-Curtis)                                |
| (27) James Darrell Stepp  | (61) Kimberly Puckett  |
| (28) Jeffrey W. Powell  | (62) Janice F Pierce   |
| (29) Cheryl Kim (Lainhart) Powell   | (63) Timothy J Pierce  |
| (30) Jennifer L. Crawford   |  |
| (31) Raymond Eaton  |  |
| (32) Lena Gilbert   |  |
| (33) Janet Rose Parrish   |  |
| (34) Cheryl Y Baker   |  |

- (64) Pamela R Lane
- (65) Peter Dixit
- (66) Ellen J Bundy
- (67) Gerald Bundy, filed by surviving spouse Ellen J Bundy (Payable to Ellen Bundy)
- (68) Karen Fint
- (69) Charles E Fint
- (70) Phillip L Fint
- (71) Jeanie A Hanshell
- (72) James E Hanshell
- (73) Barbara J Rose
- (74) Alisha Leeanne Fint
- (75) Sally Greene
- (76) Samuel Greene
- (77) Naomi F. Rawlins
- (78) David D. Rawlins, filed by surviving spouse Naomi Rawlins (Payable to Naomi Rawlins)
- (79) Betty L. Akers by Executor David D. Akers
- (80) Cheryl Y Baker Sizemore
- (81) Jesse Recker
- (82) Pamela Haught
- (83) Robin R Havens
- (84) Judy Gayle Miller
- (85) Sharon McIntosh
- (86) Aldus Weaver, filed by Joe Ragona (Payable to Joe Ragona)
- (87) Bonnie E Prater
- (88) Essie L Derringer
- (89) Kimberly Derringer
- (90) William Derringer, Jr.
- (91) William Derringer, Sr.
- (92) Carolyn J Doolin
- (93) Michael Sopronyi
- (94) Sharron Sopronyi
- (95) Michael J. Sopronyi III
- (96) Katherine Joan Spegal
- (97) Donna Arocho
- (98) Sandra Lou Woodard
- (99) Olin H Osborne
- (100) Dorothy G Hasty
- (101) Kelin F. Hasty, filed by surviving spouse Dorothy Hasty (Payable to Dorothy Hasty)
- (102) Shannon Burns, filed by Ramona Dennison (Payable to Ramona Dennison)
- (103) Debra Osborne-Duncan
- (104) Lida Mae Osborne, filed by surviving child Debra Osborne-Duncan (Payable to Debra Osborne-Duncan)
- (105) Ephraim Washington Osborne, Jr., filed by surviving child Debra Osborne-Duncan (Payable to Debra Osborne-Duncan)
- (106) Michelle Milligan
- (107) Ramona Dennison
- (108) Edna Hopkins, filed by surviving spouse Robert Hopkins (Payable to Robert Hopkins)
- (109) Wanda Harper
- (110) John W. Marshall
- (111) Angela Colton
- (112) Dean Colton
- (113) Tonya Ballinger
- (114) Robert Hopkins
- (115) Richard Lee Cowdrey, filed by surviving spouse Sharon Cowdrey (Payable to Sharon Cowdrey)
- (116) Richard Kelin Cowdrey, filed by surviving mother Sharon Cowdrey (Payable to Sharon Cowdrey)
- (117) Kelly Milligan
- (118) Martha A Lay
- (119) Lacynda Gurdon
- (120) Sharon Cowdrey
- (121) Perry Wilson
- (122) Loraine Layne
- (123) Tina Marie Ballinger
- (124) Steve Ditty, filed by surviving spouse Gail L. Ditty (Payable to Gail Ditty)

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| (125) Sharon Azbill   | (153) Diana Burggraf Tragesser Moore Washburn                                    |
| (126) Karen D Lenhart   | (154) Rick Francis   |
| (127) Charles F Lenhart   | (155) John T.E. Hensley  |
| (128) James T Jewell  | (156) Lisa Ann Hensley   |
| (129) Teresa Howard   | (157) John Hensley   |
| (130) Hubert Howard, III  | (158) Donna L Brandenstein   |
| (131) Jimmy Allen Woodard   | (159) Donald C Brandenstein  |
| (132) Melvin E Adams II   | (160) Michael David Bell, Sr.  |
| (133) Fern Jones  | (161) Sara Lou Bell  |
| (134) Robin M Green   | (162) Linda Sizemore Bowling   |
| (135) Russell Lee Flowers, filed by Executrix Deanna Lantz (Payable to Deanna Lantz)                  | (163) Samantha Buckner   |
| (136) Sharon Kay Flowers Card, filed by Executrix Deanna Lantz (Payable to Deanna Lantz)              | (164) Crystal DeWeese  |
| (137) Deanna Lynn Lantz   | (165) Geraldine Foust  |
| (138) James G. Stepp  | (166) Jeannie Hurst  |
| (139) Richard Derringer   | (167) Luther McKinney  |
| (140) Mary Flowers, filed by Executor James Hoerner (Payable to James Hoerner)                        | (168) Mary McKinney  |
| (141) Lovena Suzette Harp   | (169) Clyde W Parks  |
| (142) Lonnie Endicott   | (170) Mary Parks, filed by surviving spouse Clyde Parks (Payable to Clyde Parks) |
| (143) Deanna Lynn Flowers McNally Lantz   | (171) Joseph Edward Wilson   |
| (144) Theresa Stepp   | (172) Mary Wilson  |
| (145) Melvin Earnest Adams, filed by Katherine Adams-Fortaleza (Payable to Katherine Adams-Fortaleza) | (173) Clarence J Woodard   |
| (146) Katherine Adams-Fortaleza   | (174) Marvin T Spegal  |
| (147) Kay Sizemore a/k/a Sharon Kay Sizemore Woodard  | (175) Charles R Azbill   |
| (148) Karri Ann Sizemore  | (176) Demaree D DeWeese, Sr  |
| (149) Paul Sizemore   | (177) Shirley A English  |
| (150) Carl Michael Anthony Sizemore   | (178) Howard S Serio   |
| (151) Robert Dale Duncan Sr., filed by surviving daughter Alicia N. King (Payable to Alicia King)     | (179) Frances J Serio  |
| (152) William E. Burggraf, filed by Diana Washburn (Payable to Diana Washburn)                        | (180) Ernest B English   |
|   | (181) Laura Havens   |
|   | (182) Janet Havens   |
|   | (183) Mary Catheryn Frazier  |
|   | (184) Lizzie M Sherman Chambers  |
|   | (185) Roy Havens, filed by Janette Havens (Payable to Jeanette Havens)           |
|   | (186) Myrtle Hensley, filed by Janette Havens (Payable to Jeanette Havens)       |
|   | (187) Laura A Roseberry  |

(188) John Burns	(191) Magalene Howard
(189) Bonnie Prater	(192) Hubert Howard, Jr.
(190) Dallis Prater, filed by Claimant	(193) Amanda Jackson
Bonnie Prater (Paybale to Bonnie Prater)	(194) Justin Branscomb
	(195) Luann Hensley

The Court notes that 195 payments of \$451.61 totals \$88,069.80, which leaves a remainder of \$0.32 of settlement funds in Fifth Third Bank's possession.

Because there is no fair and equitable way to further divide the remaining \$0.32 amongst the 195 claimants in this matter, the Court finds that this amount should be paid to Plaintiffs' counsel to further offset their expenses. Accordingly, the Court **ORDERS** the remaining \$0.32 to be paid to Plaintiffs' counsel.

In the interest of justice and final resolution of this matter, the Court will not consider the claim of any other person at any point following the issuance of this Order.

The Court **ORDERS** Fifth Third Bank, as trustee of the settlement funds in its possession, to issue all of the checks as Ordered herein within five business days of the date of this order, and deliver said checks to Louise Roselle, Esq., counsel for Plaintiffs, who is to distribute the checks to the above-named individuals as expeditiously as reasonably possible upon receipt.

### **III. THIS IS A FINAL, NON-APPEALABLE ORDER**

This Order is **NOT APPEALABLE**. This Order completely dispenses the entire \$158,070.12 which the undersigned was charged with distributing pursuant to the terms of the Settlement Agreement (doc. 202-1). Accordingly, the Court will not consider any other claims related to the Settlement Agreement, and will not reconsider any amount Ordered to be distributed herein.

In the event Fifth Third Bank issues a check (in its compliance with this Order) which must be re-issued to an estate or heir because it was issued to a deceased individual, such estate administrator or heir should contact the Courtroom Deputy for Magistrate Judge Michael J. Newman at (937) 512-1640. Similarly, if a check was issued to an individual who has since changed her name and cashing a check made payable to her former name would be problematic, please contact the Courtroom Deputy for Magistrate Judge Michael J. Newman at (937) 512-1640. The Court will set a hearing date for the individual, administrator, and/or heirs, and may issue a subsequent Order to Fifth Third Bank to re-issue the check to the properly-payable party.

**IT IS SO ORDERED.**

August 29, 2012

**s/ Michael J. Newman**  
United States Magistrate Judge